

ambiguity about the United States's legal and policy responses to a future Indian nuclear test.

If India tests a nuclear weapon, the 123 Agreement is over. This means the President could terminate all United States nuclear cooperation with India and fully and immediately use the United States's rights to demand the return of all items previously exported to India. This would include any special nuclear material produced by India, through the use of any nuclear materials and equipment or sensitive nuclear technology exported or reexported to India by the United States. These steps can occur as a response to any nuclear test, including instances in which India describes its actions as being "for peaceful purposes."

In addition, the United States could suspend and revoke any current or pending licenses. One of the primary purposes of this agreement is to deter India from testing nuclear weapons. New Delhi has more to gain from peaceful nuclear cooperation through this agreement than in testing.

The Hyde act and the bill before us were crafted to ensure that this is the case. Indian leaders argue that they retain the right to test. This is true. They are a sovereign nation. However, India has been warned repeatedly that consequences of another nuclear test would be dire.

In 2006, Secretary Rice stated in testimony that:

We have been very clear with the Indians. Should India test, as it has agreed not to do, or should India in any way violate the IAEA safeguards agreements to which it would be adhering, the deal from our point of view would at that point be off.

In a question for the record, I asked Secretary Rice at that time what the consequences of an Indian test would be. And she noted that under existing law:

No nuclear materials and equipment or sensitive nuclear technologies shall be exported to any nonnuclear weapons state that is found by the President to have detonated a nuclear explosive device.

Now, under United States law, and the Nuclear Non-Proliferation Treaty, India is a nonnuclear weapons state. In 2006 the Hyde act waived the application of the sanctions in the Atomic Energy Act to events that occurred before July 2005 when President Bush and Prime Minister Singh signed the joint statement. This waiver was intended to capture India's nuclear tests of 1974 and 1998, and permit U.S.-Indian cooperation in spite of those actions.

This does not apply to future Indian actions. So if India were to test tomorrow, the waiver provided by Congress in 2006 would not apply, and nuclear cooperation could be terminated. Let me repeat that. Under a law passed 2 years ago setting the parameters for congressional consideration of this agreement, if India were to test a nuclear weapon, terminate, or abrogate IAEA safeguards, materially violate IAEA safeguards, violate an agreement for co-

operation with the United States, encourage another nonnuclear weapons state to engage in proliferation activities, or engage in unauthorized proliferation of sensitive nuclear technology, the agreement and United States cooperation could be terminated.

If that is not enough to satisfy the Senators' concerns, I would direct them to article 14 of the agreement:

Should India detonate a nuclear explosive device, the United States has the right to cease all nuclear cooperation with India immediately, including the supply of fuel as well as the request for the return of any items transferred from the United States, including fresh nuclear fuel.

Under Secretary Rood stated in testimony before the Foreign Relations Committee on September 18, 2008 that:

Just as India has maintained its sovereign right to conduct a test, so too have we maintained our right to take action in response.

Under article 14, the United States can also demand the return of any nuclear materials and equipment transferred pursuant to the agreement for cooperation as well as any special nuclear material produced in India, if it detonates a nuclear explosive device. This was confirmed in response to a question posed by the House of Representatives. The administration answered that even "the fuel supply assurances [contained in the 123 agreement] are not . . . meant to insulate India against the consequences of a nuclear explosive test or a violation of nonproliferation commitments."

The United States would be able to exercise its right under article 14 of the agreement to require the return of materials and equipment subject to the agreement after, one, giving written notice to India that the agreement is terminated and, two, ceasing all cooperation based on a determination that a mutually acceptable resolution of outstanding issues has been impossible or cannot be achieved through consultation.

Both of these actions are within the discretion of the U.S. Government and do not require Indian agreement, and both can be taken at once.

In sum, the United States-India peaceful nuclear cooperation agreement ceases if India tests. This conclusion is consistent with any reasonable interpretation of the Atomic Energy Act, the Hyde Act, and article 14 of this agreement. As a result, this amendment is unnecessary. The issues it seeks to address have been remedied. I urge colleagues to vote against the amendment. The real effect of adoption of this amendment would be to, once again, delay consideration and approval of this important agreement. It is time to move forward and to vote on this legislation and start peaceful nuclear cooperation between the world's two largest democracies.

The second portion of the amendment we are considering now requires a certification and a report that are at best duplicative of provisions already

in law. This amendment would simply delay implementation of the U.S.-India 123 agreement in order to effect requirements that have already been enacted. First, the amendment requires the President to certify to Congress that no technology, material, or equipment, nor any facility supplied by the United States to India under the 123 agreement assisted with a nuclear detonation, if one occurs in India. In my opinion, this provision is duplicative of section 104(g) of the Hyde Act passed by Congress in 2006. Under that existing law, the President is already required to report annually on whether U.S. civil nuclear cooperation with India is in any way assisting India's nuclear weapons program. This report is to include information on whether any U.S. technology has been used by India for any activity related to the research, testing, or manufacture of nuclear explosive devices. It is unclear what additional information is required by the Senator's amendment than is available each year now to Congress under the Hyde Act.

Second, the amendment requires a report on any export controls that could be used by the United States if India detonated a nuclear explosive. The purpose of the export controls would be to ensure that no U.S. materials, equipment, or technology that may be in countries other than India could be reexported by those nations to India so as to minimize all trade with India and ensure that no U.S. technology or exports contributed to their nuclear weapons program.

Again, this provision is repetitive. In 2006, Congress endorsed section 105 of the Hyde Act that created a Nuclear Export Accountability Program for all U.S. exports to India. The purpose of section 105 was to ensure that our country was taking all appropriate measures to maintain accountability of all nuclear materials, equipment, and technology sold, leased, exported, or reexported to India to ensure full implementation of the IAEA safeguards in India and U.S. compliance with article I of the NPT. The program created by the Hyde Act is a highly detailed accounting system focused on ensuring that India is complying with the relevant requirements, terms, and conditions of any licenses issued by the United States regarding exports to India. This program represents the most comprehensive and detailed system of accounting ever imposed. I believe it provides substantially the same information that is required in the Senator's amendment, without the need for a new law.

The Hyde Act also addressed the concern that other nations might continue to supply India with any technology or fuel in the event of a cutoff by the United States. Section 103 of the Hyde Act makes it the policy of the United States to strengthen the guidelines and decisions of the Nuclear Suppliers Group to move other nations toward "instituting the practice of a timely